

**RHODE ISLAND DEPARTMENT OF LABOR & TRAINING
DIVISION OF PROFESSIONAL REGULATION
HOISTING ENGINEERS EXAMINING BOARD
TUESDAY, MARCH 8, 2005
10:00 A.M.**

In attendance: David Rodrigues

David Burnham

Ellery Wood

Benjamin Anthony

John Shaw

David Rodrigues, Chairperson, called the meeting to order at 10:10 a.m. There is a quorum. The only member not present today is Kathy Serrecchia.

The first order of business is acceptance of the minutes of the Tuesday, January 11, 2005 meeting of the Board of Examiners of Hoisting Engineers. The February 8, 2005 meeting of the Board of Examiners of Hoisting Engineers was cancelled. Mr. Rodrigues asked if everyone had an opportunity to review the minutes, and they had. Mr. Burnham made a motion to accept the minutes as submitted. Ellery Wood seconded the motion. All members voted in favor.

The next item on the agenda is legislation. There are two (2) pieces of

legislation which were introduced in the 2005 session of the General Assembly which relate to hoisting engineers. One of them is the bill which requires state issued decals to be affixed to all hoisting equipment rented out by rental companies. This decal would notify the operator of the rental equipment that a state license is required to operate the equipment within this state. This legislation was introduced in the 2004 session of the General Assembly, and passed, however, it was vetoed by the Governor. This is legislation the Board believes is extremely important and helpful for the enforcement of the hoisting engineers law.

The second piece of legislation would remove the Chief Hoisting Engineer Investigator as the Chairperson of the Board, and provides for the election of a Chairperson and Secretary. Right now, the Chief/Chairperson has to recuse himself/herself from voting on legislation because he/she is the investigator of the violation and must testify to the facts of his/her investigation. This is a conflict, and the enactment of this legislation would clean up this problem.

There is another piece of legislation which removes all trade licensing board's ability to conduct examinations. This is another bill which reduces the possibility of a conflict of interest among board members. Currently, board members do not conduct examinations. The Department of Labor & Training/Professional Regulation do.

The last item on the agenda is appeal hearings. There is one (1)

appeal hearing scheduled for today, for which there is a court reporter.

Mr. Rodrigues turned the Chair of this meeting over to Mr. Burnham, and recused himself from voting on this hearing since he was the investigator of this violation.

Today's appeal hearing pertains to SS-20 Building Systems, Inc. Mr. Rodrigues was sworn in by the court reporter. Although SS-20 Building Systems, Inc. requested this hearing, they were not present, nor did they request a continuance, or say they would not be present.

The hearing notice which was sent to them was read by Mr. Burnham, and it clearly states that if the company failed to appear at this hearing, it would be conducted in their absence.

Mr. Rodrigues read the violation. On January 19, 2005, Mr. Rodrigues was traveling on Route 95 South when he noticed a forklift in the air. Upon further investigation, Mr. Rodrigues came upon Mr. Juan Pablo Zelaya-Montoya, an employee of United Wall Systems, Inc. operating a construction forklift in an unsafe manner. Mr. Zelaya-Montoya is unlicensed. The Project Manager for Marshall Properties, Inc. was notified of this violation, and he agreed to stop work until a licensed

operator was brought in to do the work. Mr. Rodrigues took photographs of the forklift that had been altered, thereby making it unsafe to operate. Marshall Properties, Inc. is the general contractor. SS-20 Building Systems, Inc. is a sub-contractor to Marshall Properties, Inc., and United Wall Systems is a sub-contractor to SS-20 Building Systems, Inc. Since this incident occurred, Marshall Properties, Inc. paid their fine. They sent a check on February 24, 2005. United Wall Systems, Inc and the operator have not yet responded to the violation, however, they are not required to until Wednesday, March 9, 2005. SS-20 Building Systems, Inc. did respond, and requested an appeal, however, they did not appear for today's hearing.

Mr. Benjamin Anthony made a motion that based on the uncontradicted testimony of Mr. Rodrigues, Chief Hoisting Engineer Investigator, a finding of fact was made that Mr. Juan Pablo Zelaya-Montoya, an employee of United Wall Systems, Inc., did operate a construction forklift at the new self-storage facility located on 35 Oxford Street, Providence, RI in an unsafe manner, and without a valid RI Hoisting License as required by RUGL 28-26-5. For this reason a recommendation will be made to the Director to uphold the fine of \$500 issued to SS-20 Building Systems, Inc., who sub-contracted the work to United Wall Systems, Inc. Mr. Ellery Wood seconded the motion. All members voted in favor.

This concludes the hearings. Mr. Burnham turned the Chair of the

meeting back over to Mr. Rodrigues. There was no further business before the Board.

Mr. Burnham made a motion to adjourn at 10:20 a.m. Mr. Wood seconded the motion. All members voted in favor.

The next meeting of the Board of Examiners of Hoisting Engineers is scheduled for Tuesday, April 12, 2005 at 10:00 a.m. in Building #70 of the Department of Labor & Training, second floor conference room, 1511 Pontiac Avenue, Cranston, RI 02920.